

5.9.2018

A8-0245/166

Amendment 166
Jean-Marie Cavada
on behalf of the ALDE Group

Report
Axel Voss
Copyright in the Digital Single Market
COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)

A8-0245/2018

Proposal for a directive
Recital 37 a (new)

Text proposed by the Commission

Amendment

(37a) Certain information society services, as part of their normal use, are designed to give access to the public to copyright protected content or other subject-matter uploaded by their users. The definition of an online content sharing service provider under this Directive should cover information society service providers one of the main purposes of which is to store and give access to the public or to stream copyright protected content uploaded /made available by its users and that optimise content beyond the mere hosting of the content, including amongst others promoting, target displaying, tagging, curating, sequencing the uploaded works or other subject-matter, irrespective of the means used therefor, and therefore act in an active way. The definition of online content sharing service providers under this Directive should not cover service providers that act in a non-commercial capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all right holders concerned, such as educational or scientific repositories. Providers of cloud services for individual use which do not provide direct access to the public, open source software

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developing platforms, and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within the meaning of this Directive.

Or. en

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Amendment 167

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Report

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Copyright in the Digital Single Market

COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)

A8-0245/2018

Proposal for a directive

Recital 38

Text proposed by the Commission

(38) *Where information society service providers store and provide access to the public to copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing an act of communication to the public, they are obliged to conclude licensing agreements with rightholders, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council³⁴.*

In respect of Article 14, it is necessary to verify whether the service provider plays an active role, including by optimising the presentation of the uploaded works or subject-matter or promoting them, irrespective of the nature of the means used therefor.

In order to ensure the functioning of any licensing agreement, information society service providers storing and providing access to the public to large amounts of copyright protected works or other subject-matter uploaded by their users should take appropriate and proportionate measures to ensure protection of works or other subject-matter, such as

Amendment

(38) *Online content sharing service providers perform an act of communication to the public and therefore are responsible for their content. As a consequence of their active role, they should conclude fair and appropriate licensing agreements with requesting rightholders. Therefore they cannot benefit from the liability exemption provided for in Article 14 of Directive 2000/31/EC³⁴ as far as copyright relevant acts are concerned.*

The responsibility of online content sharing providers should not extend to hyperlinking with respect to press publications, as defined in this Directive.

The right holder should not be obliged to conclude licensing agreements.

implementing effective technologies. This obligation should also apply when the information society service providers are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC.

Where licensing agreements are concluded, they should also cover, to the same extent and scope, the liability of users when they are acting in a non-commercial capacity.

In order to ensure the functioning of any licensing agreement, online content sharing service providers should take appropriate and proportionate measures to ensure the protection of works or other subject-matter uploaded by their users. Those measures could take different forms, involving and/or combining human review and effective technologies.

In the absence of agreements with the rightholders it is also reasonable to expect from online content sharing service providers that they remove expeditiously or take appropriate and proportionate measures leading to the non-availability on those services of copyright or related-right infringing works or other subject matter identified by right holders. Such measures should, however, not lead to the non-availability of non-infringing works or other subject matter uploaded by users. The measures taken in application of this Directive should not be applied beyond the parameters/criteria defined in cooperation with right holders. Right holders should be liable for any abuse and unjustified use of the measures taken in application of this Directive.

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal

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Market (OJ L 178, 17.7.2000, p. 1–16).

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Or. en

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Amendment 168

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Copyright in the Digital Single Market

COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)

Proposal for a directive

Recital 39

Text proposed by the Commission

Amendment

(39) *Collaboration* between *information society* service providers *storing and providing access to the public to large amounts of copyright protected works or other subject-matter uploaded by their users and rightholders* is essential for the functioning of *technologies, such as content recognition technologies*. *In such cases, rightholders* should provide the *necessary data* to allow *the services* to identify their content *and the services* should be transparent towards *rightholders* with regard to the deployed *technologies*, to allow the assessment of their appropriateness. The services should in particular *provide rightholders with information on the type of technologies used, the way they are operated and their success rate for the recognition of rightholders' content*. *Those technologies* should also allow *rightholders to get information from the information society service providers on the use of their content covered by an agreement*.

(39) *Cooperation* between *online content sharing* service providers *and right holders* is essential for the functioning of *the measures*. *In particular, right holders* should provide the *relevant information to online content sharing service providers* to allow *them* to identify their content *when applying the measures*. *The service providers* should be transparent towards *rightholders* with regard to the deployed *measures*, to allow the assessment of their appropriateness. *To avoid an excessive burden on start-ups and SMEs, the measures should be proportionate to their means and size*. *When assessing the proportionality and effectiveness of the measures implemented, due consideration should be given to technological constraints and limitations, their cost as well as to the amount or the type of works/content or other subject matter uploaded by the users of the services, the amount of works/content or the size of the service*. *In accordance with Article 15 of Directive 2000/31/EC, where applicable, the implementation of measures by service providers should not consist in a general monitoring obligation and should be limited to ensuring the non-availability of*

unauthorised uses on their services of specific and duly notified copyright protected works or other subject-matter. When implementing such measures, the service providers should also strike a balance between the rights of users and those of the right holders under the Charter of Fundamental Rights of the European Union. Measures should be without prejudice to the legitimate use of exceptions and limitations. The measures applied should not require the identification of individual users that upload content beyond the strict requirements for the proper functioning of the complaint and redress mechanism and should not involve the processing of data relating to individual users, in accordance with Regulation (EU) 2016/679^{1a} and Directive 2002/58/EC^{1b}.

Since the measures deployed by online content sharing service providers in application of this Directive could have a negative or disproportionate effect on legitimate content that is uploaded or displayed by users, in particular where the content concerned is covered by an exception or limitation, online content sharing service providers should be required to offer a complaints mechanism for the benefit of users whose content has been affected by the measures. Such a mechanism should enable the user to ascertain why the content concerned has been subject to measures and include basic information on the relevant exceptions and limitations applicable. It should prescribe minimum standards for complaints to ensure that there is sufficient information to assess and respond to complaints. A trusted third party designated by the Member State should reply to any complaints received within a reasonable amount of time. The platforms or a trusted third party responsible for the redress mechanism should take corrective action without

undue delay where measures prove to be unjustified.

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Copyright in the Digital Single Market

COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)

Proposal for a directive

Article 13

Text proposed by the Commission

Amendment

Article 13

Article 13

Use of protected content by *information society* service providers *storing and giving access to large amounts of works and other subject-matter uploaded by their users*

Use of protected content by *online content sharing* service providers

-1. Without prejudice to paragraphs 1 and 2 of Article 3 of the Directive 2001/29/EC, online content sharing service providers perform an act of communication to the public and shall conclude fair and appropriate licensing agreements with right holders that so request. Such licensing agreements concluded by the online content sharing service providers with rights holders shall cover the liability for works uploaded by the users of their services, where such users do not act for commercial purposes or are not the right holder or his or her representative.

1. *Information society* service providers *that store and provide to the public access to large amounts of works or other subject-matter uploaded by their users* shall, in cooperation with *rightholders, take* measures to ensure the functioning of agreements concluded with *rightholders* for the use of their works or

1. *The online content sharing* service providers *referred to in paragraph -1* shall, in cooperation with *right holders, take appropriate and proportionate* measures to ensure the functioning of *licensing* agreements concluded with *right holders* for the use of their works or other

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other subject-matter *or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the* service providers. *Those measures, such as the use of effective content recognition technologies,* shall be appropriate and proportionate. *The* service providers shall *provide rightholders with adequate* information *on the* functioning *and the deployment* of the measures, *as well as, when* relevant, *adequate reporting* on the *recognition and* use of the works and other subject-matter.

subject-matter *on those* services.

In the absence of licensing agreements with right holders, online content sharing service providers shall *ensure the non-availability of, or remove expeditiously from their services, copyright-protected works or other subject matter that are identified by right holders and shall take* appropriate and proportionate *measures to prevent future availability of such works or other subject matter. Any measures taken for this purpose by* service providers shall *not prevent the availability of non-infringing or non-identified copyright-protected works or other subject matter, including such content covered by a copyright exception.*

Member States shall ensure that the online content sharing service providers apply such measures based on the relevant information provided by right holders. To ensure the effective functioning of those measures, right holders shall provide online content sharing service providers with such information.

Online content sharing service providers shall inform right holders, in a transparent manner, of the measures employed, their implementation, and where relevant, shall periodically report on the use of the works and other subject-matter.

Member States shall ensure that the implementation of any measures as referred to in paragraph 1 shall be proportionate, taking into account, among others, the nature and size of the services, the availability of technologies and their effectiveness in light of technological developments, and strike a balance between the fundamental rights of users and right holders, including those enshrined in exceptions and limitations provided for in Union law and the rights set out in Article 11 of the Charter of Fundamental Rights, and shall in accordance with Article 15 of Directive 2000/31/EC, where applicable, not impose a general obligation on online content sharing service providers to monitor the information which they transmit or store.

2. Member States shall ensure that the service providers referred to in paragraph 1 put in place complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1.

*2. To prevent misuses of or restrictions to the exercise of exceptions and limitations to copyright law, Member States shall ensure that the service providers referred to in paragraph 1 put in place **effective and expeditious** complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1. **Any complaint filed under such mechanisms shall be processed without undue delay and be subject to human review by a trusted third party designated by the Member States. Right holder's liability shall be incurred for any unjustified use of the measures referred to in paragraph 1, and dismissal of complaints shall be motivated.***

Moreover, in accordance with Directive 95/46/EC, Directive 2002/58/EC, Regulation 2016/679 (General Data Protection Regulation), Article 8 of the Charter of Fundamental Rights and Article 19 of the UN Declaration on Human Rights Charter, the measures referred to in paragraph 1 shall only require the identification of individual users and the processing of their personal

data, to the strict extent necessary for the proper functioning of the complaints and redress mechanism referred to in this paragraph. Once a complaint has been definitively resolved under the complaints and redress mechanism, the personal data related to that complaint shall be deleted.

Member States shall also ensure that, in the context of the application of the measures referred to in paragraph 1, users have access to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright rules.

3. Member States shall facilitate, where *appropriate*, the cooperation between the *information society* service providers *and rightholders* through stakeholder dialogues to *define best practices, such as* appropriate and proportionate *content recognition technologies*, taking into account, *among others*, the nature of the services, the availability of *the* technologies and their effectiveness in light of technological developments.

3. Member States shall facilitate, where *necessary*, the cooperation between the *online content sharing* service providers, *users and right holders* through stakeholder dialogues to *agree criteria for determining whether the measures relating to unlicensed works and other subject matter referred to in paragraph 1 are* appropriate and proportionate, taking into account, *for example*, the nature *and size* of the services, the *number of works or amount of other subject matter available on the service*, the availability of technologies and their effectiveness in light of technological developments.

Or. en